



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 17, 2003

Mr. Lance Beversdorff
Staff Attorney
Texas Youth Commission
P.O. Box 4260
Austin, Texas 78765

OR2003-2646

Dear Mr. Beversdorff:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179776.

The Texas Youth Commission (the "commission") received a request for information relating to an incident that resulted in a workers' compensation claim. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We begin by noting that some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, the submitted information includes completed reports made of, for, or by a governmental body. This information must be released under section 552.022(a)(1) unless it is expressly confidential under other law or excepted from

disclosure under section 552.108 of the Government Code. You do not claim an exception to disclosure under section 552.108. However, you do raise sections 552.101 and 552.117, and thus we address your arguments under these exceptions.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. Section 402.083 of the Labor Code, which pertains to records of the Texas Workers' Compensation Commission ("TWCC"), provides in part:

- (a) Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this subtitle.

Labor Code § 402.083(a). This provision makes confidential information in TWCC's claim files. *See* Open Records Decision No. 619 (1993). Section 402.086(a) of the Labor Code essentially transfers this confidentiality to information that other parties obtain from the TWCC's files. Section 402.086(a) provides as follows:

- (a) Information relating to a claim that is confidential under this subtitle remains confidential when released to any person, except when used in court for the purposes of an appeal.

Labor Code § 402.086(a). In Open Records Decision No. 533 (1989), this office determined that the predecessor provision to sections 402.083 and 402.086 protected information received from the Industrial Accident Board (now the TWCC), but did not protect information regarding workers compensation claims that the governmental body did not receive from the TWCC.

You state that the submitted information pertains to a workers' compensation claim that was filed by an employee of the commission. You do not inform us, however, and we are not otherwise able to determine whether the commission received any of the information in question from the TWCC. To the extent, however, that the commission received any responsive information relating to a workers' compensation claim from the TWCC, any such information is confidential under sections 402.083 and 402.086 of the Labor Code and must be withheld from disclosure under section 552.101 of the Government Code. Information relating to a workers' compensation claim that the commission did not receive from TWCC is not confidential under sections 402.083 and 402.086 and thus is not excepted from disclosure under section 552.101.

You also claim that some of the submitted information is excepted from disclosure under section 552.117 of the Government Code. As we are unable to determine whether you must withhold that information under section 552.101, we will address your claim under

section 552.117. Section 552.117(1) excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(1) must be determined at the time that the request for the information is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the commission may only withhold information under section 552.117(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date on which the commission received this request for information. The commission may not withhold information under section 552.117(1) on behalf of a current or former employee who did not make a timely election to keep the information confidential.

You state that the submitted information relates to employees of the commission who elected under section 552.024 to keep their home addresses, home telephone numbers, social security numbers, and family member information confidential. Assuming that these employees made their elections under section 552.024 prior to the commission's receipt of this request for information, we have marked the information that is excepted from disclosure under section 552.117.

In the event that the injured employee did not make a timely election under section 552.024, we note that his social security number may be excepted from disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security number in question is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that authorizes the commission to obtain or maintain a social security number. Thus, we have no basis for concluding that this social security number was obtained or is maintained pursuant to such a law and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing a social security number, the commission should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

In summary, any responsive information relating to a workers' compensation claim that the commission received from the TWCC is excepted from disclosure under section 552.101 of the Government Code in conjunction with sections 402.083 and 402.086 of the Labor Code. In the event that the marked information that relates to the commission employees is not excepted from disclosure under section 552.101, the commission must withhold that information under section 552.117 if the employees timely elected under section 552.024 to keep the marked information confidential. The commission also may be required to withhold

a social security number under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. Any responsive information that is not excepted from disclosure under sections 552.101 or 552.117 must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

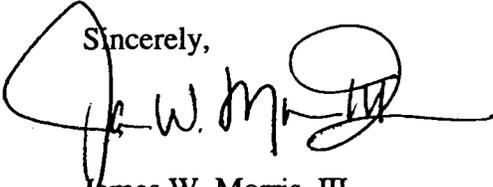
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 179776

Enc: Submitted documents

c: Mr. Brian Cass
Sedalco Construction Services
McLennan County Phase II – Job Office
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Mart, Texas 76664
(w/o enclosures)